

ARKANSAS SUPREME COURT

No. CR 06-910

NOT DESIGNATED FOR PUBLICATION

MARK A. THOMPSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered October 26, 2006

PRO SE MOTIONS EXTENSION OF
TIME TO FILE BRIEF AND FOR
TRANSCRIPT [CIRCUIT COURT OF
PULASKI COUNTY, CR 2004-268,
HON. CHRISTOPHER CHARLES
PIAZZA, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT

PER CURIAM

Mark A. Thompson entered a plea of guilty to first-degree domestic battering and was sentenced to 240 months' imprisonment. The judgment and commitment order was filed on September 13, 2004. Subsequently, appellant filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition as being untimely and appellant, proceeding *pro se*, has lodged an appeal here from that order.

Now before us are appellant's *pro se* motions for extension of time to file his brief and for a transcript of the hearings below. We need not consider these motions as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward because his petition was untimely. Accordingly, we dismiss the appeal and hold the motions moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13

(1996) (*per curiam*).

Appellant filed the Rule 37.1 petition on December 15, 2005, more than a year after entry of the judgment and commitment order. Pursuant to Ark. R. Crim. P. 37.2(c), if an appellant enters a plea of guilty, a petition for Rule 37.1 relief must be filed within ninety days from the date of the entry of judgment. Appellant filed his petition for Rule 37.1 relief 459 days after the date of judgment, making appellant's petition untimely filed. Time limitations imposed in Criminal Procedure Rule 37.2(c) are jurisdictional in nature, and a circuit court cannot grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989) (*per curiam*).

Appeal dismissed; motions moot.